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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/930,320

08/15/2001

May Shana'a

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01/10/2006

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EXAMINER

WANG, SHENGJUN

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,320

Applicant(s)

SHANA'A ET AL

Examiner

Shengjun Wang

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted November 7, 2005 is acknowledged. The amendments have been entered, and prosecution of application has been reopened for reasons stated in the decision by Board of Patent Appeals and Interferences issued September 29, 2005.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7-11, 13-19, 22, and 25-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. (US 5,972,322, of record), in view of Stewart (WO98/30189, of record).

Rath teaches that hair care products are available as prepared formulations. "A drawback of such products is that the user cannot alter the formulation to accommodate their particular hair characteristics or to provide specialized treatment." Col. 1, lines 11-14. Rath "provide[s] a system which enables a user to formulate a variety of shampoos, hair conditioners or styling compositions to best suit the hair care needs of the user." Col. 1, lines 22-25.

More specifically, Rath discloses "a system for formulating customized hair care products, such as hair shampoo, conditioner, and styling compositions. The hair care system is composed of separately packaged components, including a low-viscosity aqueous base

Art Unit: 1617

composition, a compatible thickening composition and, optionally, one or more enhancing additives." Col. 2, lines 48-54.

"Examples of suitable enhancing additives include a shine enhancer, oil-based moisturizer, herbal additive, hair strengthener, vitamin additive, colorant, body building and conditioning polymers, natural or synthetic fragrance oils (aroma), UV absorbers, and dandruff control compounds." Col. 9, lines 30-35. Rath teaches exemplary compositions for a "stimulating or astringent herbal additive" and a "soothing herbal additive" (columns 19-20), both compositions have vehicles with at least two ingredients in common. Rath also teaches exemplary color concentrate compositions (columns 20 through 23), all of the compositions have vehicles with at least two ingredients in Common.

Rath teaches that the base, thickener, and additive components are provided separately, together with instructions (col. 13, lines 31-35). "The instructions can provide one or more formulations of the components, including combinations of the base with the thickener and desired enhancing additives, to achieve a desired shampoo, conditioner or styling composition." Col. 13, lines 36-40. "(T)he base . . . is combined with the desired enhancing additives. The ingredients are typically mixed together by vigorous shaking. . . . A predetermined amount of thickener is then added to the low viscosity mixture, (and) the mixture is vigorously shaken to provide a homogeneous mixture." Col. 13, lines 53-60.

3. For a composition containing a solvent, a solubilizing agent and a preservative, see the conditioner base disclosed at col. 5, line 44 to col. 6, line 8. For polyethylene glycol ethers of fatty alcohols and polysorbates as solubilizing agents see col. 5, lines 60-67. For the viscosity of the base compositions within the instantly claimed viscosity ranges see col. 3, lines 3-4, col. 5,

Art Unit: 1617

lines 36-37, and col. 7, lines 58-59. For DMDM hydration and polyaminocarboxylic acid chelates (EDTA), see col. 13, lines 45-58, 66-67, Examples 9, 13, 14 and tables 16-21 at col. 17-23. The final composition may be prepared as a hair salon (at retail location) see col. 2, lines 34-36. The composition is packaged in containers (col. 13, lines 31-34). Rath also teaches various composition containing various performance agents in varying amounts. See, col. 4, lines 28-30 and col. 9, line 26 to col. 13, line 5. Varying the amounts of the active agents is considered equivalent to provide a plurality of intensity levels as herein claimed. Several addition types of performance agents are disclosed. See, particularly, examples 8-15.

4. Rath does not teach expressly that the vehicles of each performance agent have at least two or three ingredients in common, a blank composition, a label identifying the components of the formulation, that the fragrance contain a solvent and at least one preservative in common, a label with code, a machine scannable bar code, the volume of the container, or the angle of the container' major axis during agitation.

However, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ the same vehicles (such as solvent, preservative etc.) for each of the performance agents (e.g., colorant, fragrance,), since Rath teaches that each of the composition may contain the same components such as water, alcohols and preservatives. Rath would have made obvious to a person of ordinary skill in the art a hair care system comprising a plurality of base compositions (e.g., shampoo base and conditioner base), a thickener, and a plurality of performance agents selected from at least two classes of performance agents (e.g., the two herbal additive compositions in columns 19-20 and two or more of the color concentrates in columns 20-23). According to Rath's disclosure, the user would

Art Unit: 1617

select the desired additives, such as fragrance, colorant, vitamins etc., combine them with the appropriate base (shampoo base for making shampoo, conditioner base for making conditioner) and mix, then add thickener and mix again. The system and method made obvious by Rath meets all of the limitations of instant claim 1 .

Further, Stewart teaches a system and a method of preparing a customized, point-of-sale cosmetic composition. The method provide a base composition, and at least one of additives, each additive comprise plurality of variants. Commonly used additives include pH adjusters, oils, drying agents, anti-dandruff agents, salts, colors, fragrances moisturizers, gloss agents, etc. See, particularly, the abstract, pages 22-25 and the claims.

It is within the skill of artisan to add an inert solvent or diluents to a cosmetic composition to dilute the composition in order to achieve the desired strength or level of activity of the composition. Therefore, absent evidence of unexpected results, the addition of a blank composition having common ingredients with the performance agents is not considered critical. The volume of the container is not considered critical to the invention absent evidence to the contrary because it is within the skill of the artisan to select a container capable of holding an appropriate amount of composition. It is within the skill of artisan to adjust the angle of container during agitation to achieve the desired mixing, absent evidence to the contrary.

It also would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to employ more than one variable performance agents, including fragrance, colors, or benefit agents such as vitamins, antidandruff agent, in a customized composition as suggested by Stewart.

Art Unit: 1617

The negative limitation excluding thickener from the “performance agents” fails to distinct the claimed invention from the method suggested by Rath. As indicated by the Board, “Even if Rath's thickener is considered a part of the base and not an enhancing additive, the method suggested by Rath meets all of the limitations of instant claim 1.” Particularly, Rath suggest a method of making shampoo or conditioner composition by mixing a base composition with additional active agents (or performance agents), such as fragrance, colorant, vitamin, herbal extract, etc.

Claims 6, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. (US 5,972,322, of record), in view of Stewart (WO98/30189, of record) for reasons set forth above, and in further view of Rigg et al. (US 5,622,692, of record).

5. Rath et al. and Stewart as whole do not teach expressly the bar code in the containers.

However, Rigg et al. teaches providing a customized cosmetic composition in a container having a bar code label for identifying the customized composition. See, particularly, col. 2, lines 55-67, col. 4, lines 16-63.

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention was made to prepare the composition of Rath using similar vehicle in a container with a bar code label as taught by Rigg et al. with the reasonable expectation of obtaining compatibility of the separate components for specialized treatment composition that can be identified for future use.

Claim 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. (US 5,972,322, of record), in view of Rigg et al. (US 5,622,692, of record) and Stewart (WO98/30189), and in further view of Tartaglione (US 4,851,062, of record).

Art Unit: 1617

Rath et al., Rigg et al. and Stewart teaches or suggests all the limitation of the claims as stated above. They do not teach expressly a container with a neck, a plug inserted in the neck and a cap, or container with a neck and a cap without an orifice.

However, Tartaglione teaches a container for packaging cosmetic composition that has a neck and a cap wherein the neck may be closed with a plug. See the abstract, column 1, lines 10-14, column 3, lines 39-41, 50-65 and column 4, lines 30-35.

Therefore it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to provide the composition as suggested by Rath et al., Rigg et al. and Stewart in a container with a plug and a cap as taught by Tartaglione expecting to provide cosmetic composition in containers with safety closure for preventing contamination of the contents.

Response to the Arguments

Applicants' amendemnts and remarks submitted November 7, 2005 have been fully considered, but are not persuasive. Therefore, the rejections set forth by the board are maintained.

It is noted that applicants have not disputed the rejections set forth in the decision by Board of Patent Appeals and Interferences. Applicants simple assert that the negative limitation "wherein said first and second class of performance agents do not include a thickener component other than component(s) selected from botanical extracts, emollients, vegetable oils, active agents for treating or preventing skin disorders, vitamins, fragrances and colorants." would distinct the claimed invention from the system suggested by Rath. As discussed above, such limitation fails to distinct the claimed method from those suggested by Rath.

Art Unit: 1617

6. **The rejections set forth by the board are maintained, and THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

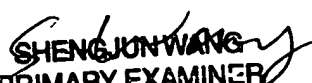
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/930,320

Page 9

Art Unit: 1617


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Art Unit 1617